

Department of Energy
Inventory of Inherently Governmental and Commercial Activities
Guide to Inventory Submission
May 2004

This document presents the instructions for submission of the 2004 Department of Energy (DOE) Inherently Governmental and Commercial Activities (IGCA) Inventory. This inventory will serve as the data set used to respond to various reporting requirements including, but not limited to, the Federal Activities Inventory Reform Act of 1998, Public Law 105-270 (FAIR Act) and the inventory of inherently governmental activities required by the Office of Management and Budget (OMB). It is important to note that for the 2004 IGCA Inventory, the Under Secretary for National Nuclear Security is requiring the National Nuclear Security Administration (NNSA) office at headquarters to obtain, review and submit for inclusion in the Department's complete IGCA Inventory, all NNSA headquarters and subordinate field office inventory data

In this guide there are references to four enclosures. These enclosures are physically a part of this guide or available via the Internet, and are intended to provide specific information on what must be included in the IGCA inventory. An Excel based data collection tool will be provided to each office and should be updated and submitted in accordance with the instructions provided herein and in the accompanying forwarding memorandum. Additionally, all DOE offices and NNSA must submit a narrative description addressing the following:

- Justification for any movement of FTEs from commercial reason codes to inherently governmental that explains in detail the organizational or position changes that have occurred, since the 2003 IGCA Inventory was submitted, and which supports the change to inherently governmental. This requirement does not change the Department's policy that any FTE that has been coded as being included in any on-going Competitive Sourcing Initiative study conducted under OMB Circular A-76 will remain coded as "under study" until such time as the study is completed, or the Competitive Sourcing Executive Steering Group (ESG) has formally decided to remove the FTE(s) from a study.
- Strategy/philosophy for coding FTEs in particular Reason Codes and Function Codes, for example, *all clerk typists were coded as "R;"*
- Information that statistically describes all major recoding efforts between the 2003 inventory and the 2004 inventory. For example, numerically describe changes from inherently governmental to one of the commercial Reason Code (i.e., "Reason Codes A through F"), or between one of the commercial Reason Codes and another (for example, the shift from Reason Code "A" to Reason Code "C" because the FTE is including in an announced competitive sourcing initiative functional area study).

FAIR Act/A-76 program (function code, reason code, review process, etc.) questions should be directed to Mark R. Hively, preferably by e-mail at mark.hively@hq.doe.gov.

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Enclosure 1 - DOE Function Codes - General Information

Enclosure 2 - Inherently Governmental and Commercial Activities Inventory Function Codes may be accessed through the Office of Competitive Sourcing/A-76 web page at <http://www.ma.mbe.doe.gov/a-76>, through the “FAIR Act Inventory” link.

Enclosure 3 - List of selected Function Codes with definitions may be accessed through the Office of Competitive Sourcing/A-76 web page at <http://www.ma.mbe.doe.gov/a-76>, through the “FAIR Act Inventory” link.

Enclosure 4 - Reason Codes with definitions. This information may be accessed through the Office of Competitive Sourcing/A-76 web page at <http://www.ma.mbe.doe.gov/a-76>, through the “FAIR Act Inventory” link.

Enclosure 1

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DOE FUNCTION CODES – GENERAL INFORMATION

1. **GENERAL.** This list of DOE Function Codes provides the coding structure for offices to use to account for all departmental activities performed in direct support of missions.
2. **FUNCTION CODE TAXONOMY.** Each function code includes an alphanumeric code, title, and definition describing the type of work performed. Function Code definitions are intended to be comprehensive and mutually exclusive. Additionally, each definition identifies meaningful exclusions. Each grouping of Function Codes includes at least one miscellaneous “other” function that has an alphanumeric code ending in “99” (e.g., “H999 – Other Health Services”). These miscellaneous functions are used to code work that is not identified by other function codes on the list. In 2004 the use of the miscellaneous codes is discouraged and should be utilized only as the last choice.
3. **CODING MANAGEMENT FUNCTIONS.**
 - 3.1 Management functions performed at the headquarters level involve work that is significantly different than that performed at operations offices. OMB has developed separate codes and titles for each. This guide provides definitions for many of OMB’s function codes. For instance, there is a “Management Headquarters – Health Services” function and a “Hospital/Clinic Management” function. The former is concerned with setting policy and overseeing health service programs, and the latter is concerned with establishing procedures and overseeing medical services provided within fixed treatment facilities. In addition, there are services and operations that have management elements (e.g., supervision, oversight, and control). Services and operations are sometimes performed by private sector contractors. In such cases, the administration and oversight of the contract (to include quality assurance and technical review of the services provided) are considered to be an inherent part of the management function.
 - 3.2 Management Headquarters type work is defined as “overseeing, directing, and controlling subordinate organizations or units through: developing and issuing policies and providing policy guidance; reviewing and evaluating program performance; allocating and distributing resources; or conducting mid- and long-range planning, programming, and budgeting.” (This includes all management studies necessary to support management headquarters type work.) However, “Management Headquarters” functions do not include “all direct support (e.g., professional, technical, administrative or logistical support) *that is provided directly to* a major DOE headquarters office and is essential to its operation.” Direct support is included as part of a “Management Headquarters” function *only* when the support is an inherent part of, and inextricably tied to, management headquarters type work as defined above. If the support is performed separately, it is coded with the support function code that most closely describes the type of support provided. For example, a personnel operation that directly and exclusively supports a headquarters activity is not coded as a management

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headquarters function since it does not involve management headquarters type work activity. Coding is based on the *type of work activity performed* (e.g., personnel operations) and not based on where the work activity is performed (e.g., headquarters or field office).

4. CODING RULES FOR THE INHERENTLY GOVERNMENTAL AND COMMERCIAL ACTIVITY (IGCA) INVENTORY.

- 4.1** When coding for the IGCA inventory, FTEs are grouped by function and coded to indicate the type of work activity performed. In some cases, this may not correspond to what position series and titles might lead reviewers to believe an FTE's activities must be. For instance, although accountants are typically found in accounting functions and engineers in an engineering function, in some cases, a budget analyst may be working in an accounting function or a geologist in an engineering function. Therefore, the function code selected is based on the type of activity (i.e., accounting function) and not type of position (i.e., budget analyst) associated with the FTE. This year, as in 2003, offices are being asked to associate identify position titles/position series, as well as function codes to FTEs in order to assist management in determining potential competitive sourcing cost comparison study candidates.
- 4.2** Please keep in mind that the FAIR Act inventory is based on describing the activities of the Department by FTEs. While many offices have utilized a single OMB Function Code to define all the activities of a particular position within their organizations, doing so is neither necessary nor required. In fact, making an effort to break out the activities of a position and using the Function Code(s) that more accurately describe each of those activities could make the inventory a more useful tool. This multi-coding concept can result in reporting partial FTEs (e.g. .4 FTE) of different function and, potentially, reason codes and reported with repeated or duplicated position information. What we are emphasizing is that one FTE on the inventory does not have to equal a single employee position.
- 4.3** The IGCA inventory accounts for the type of work activity authorized to be performed — FTE authorizations — regardless of whether the position associated with the FTE is burdened or not (filled or vacant). FTEs are reported regardless of whether the incumbent of the position associated with the FTE is borrowed or diverted to perform other work; is on temporary or extended detail, leave, or training; or has full or part-time collateral duties.
- 4.4** The IGCA inventory is based on current processes, procedures, organizational structures, equipment, and workloads. Offices may not omit or add FTEs or code FTEs based on presumed improvements to organizational structures, equipment, technologies, work arrangements, processes, or procedures, except to the extent that doing so permits the office to report the FTE level (including vacancies) for FY 2004, as set forth in the FY 2005 Budget.

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4.5 The definitions for the acquisition functions in this list are not intended to reflect or align with the Department's definition for the "Acquisition Work Force" as addressed in DOE Order 361.1. The Department's definition for the "Acquisition Work Force" is based on organizations and occupational series. As explained above, DOE functions are based on the type of work performed regardless of its organization and are not based on (or necessarily relate to) occupational series occupational specialties.

5 DATA ANALYSIS.

5.1 The definition for each function code describes the type of work performed. The functional definition **does not** reflect:

- (1) whether the function is inherently governmental or commercial in nature;
- (2) whether the function is subject to, or exempt from, competition;
- (3) how functions or activities are packaged for competitive sourcing; or,
- (4) how FAIR Act challenges and appeals are handled.

It is important to keep in mind that the inventory information will be reviewed by parties internal and external to DOE. Those parties may not be aware of the fact that management and organizational arrangements, geographic dispersion, span-of-control, and management relationships differ greatly among the DOE offices. Also, they may not be aware of the degree to which DOE offices rely on inter/intragovernmental support and private sector services and the level of such support. Those parties may make DOE-wide comparisons of functions, functional groups, functional categories, or organizational levels (e.g., management headquarters functions), in order to assess the type of activity or to question inherently governmental and commercial designations of FTEs. By documenting the rationale behind your coding decisions, any questions resulting from the review and analysis of your inventory information by other parties should be easier to answer.

Enclosures 2 & 3

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Enclosure 2

Complete list of 2004 Inherently Governmental and Commercial Activities Inventory Function Codes may be accessed through the Office of Competitive Sourcing/A-76 web page at <http://www.ma.mbe.doe.gov/a-76>, through the “FAIR Act Inventory” link. **There are no changes to this list as compared to the 2003 list.**

Enclosure 3

List of selected Function Codes with definitions may be accessed through the Office of Competitive Sourcing/A-76 web page at <http://www.ma.mbe.doe.gov/a-76>, through the “FAIR Act Inventory” link. This list includes definitions for some of the function codes. The definitions are based on information contained in the Department of Defense Guide for Inventory Submission. The DOE IGCA Inventory is not restricted to just the function codes that are defined in this section. The complete list of Function Codes is referenced in Enclosure 2. **There are no changes to this list as compared to the 2003 list.**

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REASON CODES

Reason Code Z

Inherently Governmental Reason Code Z. *{NOTICE: The following information represents an important change in definition from what has been used by the Department of Energy (DOE) in the past.}*

The revised OMB Circular A-76 (dated May 29, 2003), fundamentally changed the definition and elevated the threshold for FTE activities to be coded as “inherently governmental.” OMB Circular A-76 is available at: <http://www.whitehouse.gov/omb/circulars/index.html>. The revised OMB Circular A-76 supersedes the guidance in the Office of Federal Procurement Policy (OFPP) Letter 92-1 that defined and described inherently governmental activities. The Federal Acquisition Regulation, Part 7.5 – Inherently Governmental Functions, which has as its basis OFPP Letter 92-1, has not been revised to reflect the supersession of the policy letter. Current OMB Circular A-76 language describing inherently governmental activities varies from the description of inherently governmental activities contained in the FAIR Act. Despite the foregoing, for the purposes of the DOE 2004 Inherently Governmental and Commercial Activities (IGCA) Inventory, the Department will apply the OMB Circular A-76 interpretation of inherently governmental to the coding of FTEs.

a. As justified in writing by the Department’s Competitive Sourcing Official (CSO) {see elsewhere for specific guidance on preparation of written justifications}, organizations shall use the inherently governmental criterion for coding FTEs only when the activity of a FTE, or percentage of a FTE, “is so intimately related to the public interest as to mandate performance by government personnel.” According to OMB Circular A-76, at Attachment A, paragraph B, instead of merely exercising “discretion,” the FTE must now exercise “substantial discretion.” Consequently, the code of inherently governmental is only assigned to FTE whose function involves the “exercise of substantial discretion in applying government authority and/or in making decisions for the government.” OMB Circular A-76 states that “Inherently governmental activities normally fall into two categories: the exercise of sovereign government authority or the establishment of procedures and processes related to the oversight of monetary transactions or entitlements. An inherently governmental activity involves:

- (1) Binding the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;
- (2) Determining, protecting, and advancing economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;
- (3) Significantly affecting the life, liberty, or property of private persons; or

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(4) Exerting ultimate control over the acquisition, use, or disposition of United States property (real or personal, tangible or intangible), including establishing policies or procedures for the collection, control, or disbursement of appropriated and other federal funds.

While inherently governmental activities require the exercise of substantial discretion, not every exercise of discretion is evidence that an activity is inherently governmental. Rather, the use of discretion shall be deemed inherently governmental if it commits the government to a course of action when two or more alternative courses of action exist and decision making is not already limited or guided by existing policies, procedures, directions, orders, and other guidance that (1) identify specified ranges of acceptable decisions or conduct and (2) subject the discretionary authority to final approval or regular oversight by agency officials.”

b. “An activity may be provided by contract support (i.e., a private sector source or a public reimbursable source using contract support) where the contractor does not have the authority to decide on the course of action, but is tasked to develop options or implement a course of action, with agency oversight. An agency shall consider the following to avoid transferring inherently governmental authority to a contractor:

- (1) Statutory restrictions that define an activity as inherently governmental;
- (2) The degree to which official discretion is or would be limited, i.e., whether involvement of the private sector or public reimbursable provider is or would be so extensive that the ability of senior agency management to develop and consider options is or would be inappropriately restricted;
- (3) In claims or entitlement adjudication and related services (a) the finality of any action affecting individual claimants or applicants, and whether or not review of the provider’s action is de novo on appeal of the decision to an agency official; (b) the degree to which a provider may be involved in wide-ranging interpretations of complex, ambiguous case law and other legal authorities, as opposed to being circumscribed by detailed laws, regulations, and procedures; (c) the degree to which matters for decisions may involve recurring fact patterns or unique fact patterns; and (d) the discretion to determine an appropriate award or penalty;
- (4) The provider’s authority to take action that will significantly and directly affect the life, liberty, or property of individual members of the public, including the likelihood of the provider’s need to resort to force in support of a police or judicial activity; whether the provider is more likely to use force, especially deadly force, and the degree to which the provider may have to exercise force in public or relatively uncontrolled areas. These policies do not prohibit contracting for guard services, convoy security services, pass and identification services, plant protection services, or the operation of prison or detention facilities, without regard to whether the providers of these services are armed or unarmed;

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- (5) The availability of special agency authorities and the appropriateness of their application to the situation at hand, such as the power to deputize private persons; and
- (6) Whether the activity in question is already being performed by the private sector.

Reason Code A

Commercial Reason Code A: *“The Commercial Activity is not appropriate for private sector performance pursuant to a written determination by the CSO.”*

a. DOE offices shall designate FTEs with Reason Code A when it has been determined that the function is not appropriate for private sector performance and that determination has been affirmed in writing and signed by the Department’s Competitive Sourcing Official (CSO). For the 2004 IGCA Inventory, offices will prepare the written justification for FTE(s) coded with Reason Code A, but will not submit them for signature of the CSO. Selected offices will provide the draft justification for Office of Competitive Sourcing/A-76 (OCS) review in accordance with the Deputy Secretary’s memo. If OMB or private parties request copies of your written justifications, the OCS will forward the request to your office with the expectation that the written justifications will be provided for review and signature of the CSO. OMB has provided no specific format for the written justifications. At the minimum the justification should be in the form of Memorandums for the Record; provide sufficient identification of the Reason Code A FTE(s) so as to be able to locate the FTE(s) in the 2004 IGCA Inventory information from your office; and, explains the reasons why the activities of the FTE(s) should not be performed by the private sector.

b. At DOE, designation of FTE with Reason Code A **does not** exclude the FTE from potentially being included in DOE’s Competitive Sourcing Initiative competitions. For DOE, OMB’s practice in applying the President’s Management Agenda Competitive Sourcing Initiative requires the Department to potentially include Reason Code A FTEs in the pool of commercial activity FTEs subject to Competitive Sourcing Initiative study.

(1) This includes an FTE that has been determined to be inappropriate for private sector performance because the activities performed by the FTE is not severable from the activities performed by other inherently governmental FTE(s). The Department through Competitive Sourcing Initiative competitions or by the reporting offices themselves periodically reviewing the FTEs’ activities, Reason Code A FTEs’ activities can be evaluated to determine if they can be realigned to allow for competition.

c. DOE offices shall designate FTEs with Reason Code A to identify a minimum number of FTEs that are required to ensure that decision-making officials maintain sufficient levels of oversight, control, and accountability over Government operations and federally funded projects and tasks. Reason Code A FTEs provide corporate knowledge and technical expertise necessary to ensure that Government and public interests are advanced and that Government contractual

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obligations are fully satisfied by playing an active and informed role in areas such as contract administration and evaluation. This includes FTEs representing staff and line functions that require current technical knowledge and on-the-job training and work experience necessary to effectively influence Government decision-making and progress into FTE related positions of authority and direction.

- (1) Examples include FTEs that perform activities that:
 - a. Interpret and/or execute Federal laws and develop associated policy and regulatory guidance in assigned functional areas, e.g., resource management, procurement/contracting, personnel administration, etc.;
 - b. Render value judgments, develop recommendations, and establish management criteria and objectives on behalf of the Government, e.g., legal opinions, program priorities, budget requests, performance evaluation, contract awards, quality assurance, personnel selection and appraisal, security clearances, etc.;
 - c. Develop government positions, testimony, legislation, and responses to the Congress, audit agencies, public and private sector inquiries, etc.;
 - d. Perform duties that require official government representation, e.g., prosecution and adjudicatory functions, Federal license certifications, foreign government relations, employee labor relations, legislative activities, public affairs, financial collection activities; and,
 - e. Are in formal personnel management programs designed to provide progression into civilian positions that require government corporate knowledge and technical expertise.
2. The FTEs under this category represent the minimum number necessary to maintain government control.
3. Identification and validation of FTEs under this criterion are based upon a manpower requirements study or assessment of what functions and duties must be performed by Government employees and other conditions that must exist in order to maintain sufficient Government expertise and oversight or have been supported by the results of a Competitive Sourcing Initiative competition. Manpower guidance governing this criterion will vary by function based upon its nature, complexity, magnitude of contract reliance, organizational level, geographic dispersion, and other factors (including access to ultimate decision-maker). Every effort must be made to avoid situations where Government decision making in a functional area is weighted in favor of, or limited to, options presented by the private sector interests.

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REASON CODE B

Commercial Reason Code B. *“The commercial activity is suitable for a streamlined or standard competition.”*

Reason Code B should be applied to any FTE performing a function or activity that could be subjected to public-private OMB Circular A-76 competition.

REASON CODE C

Commercial Reason Code C. *“The Commercial Activity is the subject of an in-progress streamlined or standard competition.”*

FTEs identified in Reason Code C are those that were included in the DOE functional area competitive sourcing studies announced March 22, 2002, and excludes those FTEs the Competitive Sourcing Executive Steering Group (ESG) has released from study since that announcement (FTE excluded from study by the ESG shall be identified in the appropriate Reason Code).. The DOE Reason Code C sub-codes are as follows:

C1 - Information Technology positions identified as part of the 2002-2003 Competitive Sourcing Studies.

C2 - Human Resources positions identified as part of the 2002-2003 Competitive Sourcing Studies.

C3 - Financial Services positions identified as part of the 2002-2003 Competitive Sourcing Studies.

C4 - Logistics positions identified as part of the 2002-2003 Competitive Sourcing Studies (In 2002.

REASON CODE D

Commercial Reason Code D. *“The Commercial Activity is performed by government personnel as the result of a standard or streamlined competition (or a cost comparison, streamlined cost comparison or direct conversion) within the past five years.”*

D1 - Graphics FTEs representing the implemented MEO resulting from the 2002-2003 Competitive Sourcing Studies.

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REASON CODE E

Commercial Reason Code E. *“The Commercial Activity is pending an agency approved restructuring decision (e.g., closure, realignment).”*

DOE offices shall use Reason Code E for all FTEs performing activities in a function that has been deferred from a streamlined or standard competition pending the results of an approved force restructuring decision. This code is limited to restructuring initiatives such as approved site closures, or functional realignment or consolidation actions that have been approved in writing.

REASON CODE F

Commercial Reason Code F. *“The Commercial Activity performed by government personnel due to a statutory prohibition against private sector performance.”*

Any use of Reason Code F will be supported in the narrative description submitted to the Office of Competitive Sourcing/A-76 at the time of submission of the inventory data collection tool.